

**Office of
The City Attorney
City of San Diego**

MEMORANDUM

DATE: December 24, 2003

TO: Casey Gwinn, City Attorney

FROM: Francis M. Devaney, Head Deputy City Attorney

SUBJECT: 2003 Trial Unit Info

The following report is litigation conducted by the Civil Division Trial Unit for the calendar year 2003. Approximately 250 new civil cases were filed against the City from December, 2002, to November, 2003. In addition, this unit has initiated numerous litigation matters, including eminent domain cases, collections cases, unlawful detainers, and other enforcement matters, obtained \$1,352,837.66 in judgments, and actually collected \$905,142.53 for the City. In addition to the information provided below, a copy of Yolanda Gammill's December 24, 2003, Civil Enforcement Unit Statistics memorandum is attached hereto.

The Trial Unit tried twelve jury trials in calendar year 2003. Defense verdicts were returned in each and every one of those trials. In addition, we tried two bench trials, and likewise won both of them. The jury trials, in chronological order, were:

- 1) *Henderson v. Robinson*
San Diego Superior Court Case No. GIC 778924
A negligence case in which Plaintiff was severely injured when her car was struck by a police car responding to an emergency call on El Cajon Blvd. Trial attorney: Ed Cahill; trial judge: Hon. William Pate.
- 2) *Thompson v. City of San Diego*
San Diego Superior Court Case No. GIC 783473
A dangerous condition of public property case in which Plaintiff broke his ankle when he slipped on a muddy hillside in Balboa Park. The muddy condition was caused by an old, broken storm drain. Trial attorney: Cara Lassman; trial judge: Hon. Ronald Prager.

3) *DuBose v. City of San Diego*

U.S. District Court Case No. 99cv2279L(NLS)

A wrongful death case in which a former Notre Dame All-American and NFL football player was shot and killed during a struggle with two police officers in Mission Beach. Trial attorney: Frank Devaney; trial judge: Hon. James Lorenz.

4) *Mitchell v. City of San Diego*

U.S. District Court Case No. 00cv0033

A false arrest/excessive force case in which Plaintiff alleged that he was injured and that his civil rights were violated when he was arrested for a violation of PC 647(f). (Drunk in public.) Plaintiff initiated the contact with the arresting officers when he approached their patrol car parked outside a Miramar Road night club and complained that their presence there was a waste of public resources. Trial attorney: Mia Severson; trial judge: Hon. Napoleon Jones, Jr.

5) *Nguyen v. City of San Diego*

San Diego Superior Court Case No. GIC 788272

A non-fatal bean bag shooting of a felony domestic violence suspect who refused to drop a knife when the police tried to arrest him. Plaintiff lost an eye and suffered moderate brain damage when a bean-bag round lodged in his left eye. Trial attorney: Rick Ostrow; trial judge: Hon. Ronald Prager.

6) *Poe v. City of San Diego*

U.S. District Court Case No. 01cv0127

An in-custody wrongful death case in which the decedent died in the back of a patrol car after fighting with the arresting officers and being forcibly restrained. Plaintiff contended that the restraining techniques and lack of medical care provided to him by the arresting officers caused the death; the City contended that decedent choked on the plastic baggie of drugs that he swallowed when he was contacted by the police. Trial attorney: Penny Castleman; trial judge: Hon. Jeffrey Miller.

7) *Langston v. City of San Diego*

San Diego Superior Court Case No. GIC 780037

An employment case in which plaintiff, an African-American Street Division Utility Worker, claimed that he was treated unfairly, not promoted, retaliated against because of past grievances, and discriminated against because of his race. Trial attorney: David Brodie; trial judge: Hon. William R. Nevitt, Jr.

8) *Wallace v. City of San Diego*

U.S. District Court Case No. 01cv0703

An employment case in which Plaintiff, a former SDPD sergeant, sued the City after he voluntarily left the department, claiming that the City had constructively discharged him by retaliating against him in violation of the Uniform Services Employment and Re-Employment Rights Act (USERRA), which protects employees whose military service requirements impact their employment. Plaintiff alleged that he left the SDPD because of various adverse employment actions taken against him, which he contended were in retaliation for his taking frequent, sometimes extended military leaves, and not for the other reasons cited by the department. A federal jury actually returned a verdict in favor of plaintiff, but, following the City's post-trial Motion for Judgment, the trial judge reversed the jury verdict and entered judgment in favor of the City. Trial attorney: Mark Stiffler; trial judge: Hon. Jeffrey Miller.

9) *Blanco v. City of San Diego*

San Diego Superior Court Case No. GIC 791552

A dangerous condition case in which Plaintiff bicyclist suffered broken ribs and a punctured lung when he struck a 3" deep sunken valve cover on Torrey Pines Road near UCSD. Trial attorney: David Brodie; trial judge: Hon. Richard Haden.

10) *Burnett v. City of San Diego*

San Diego Superior Court Case No. GIC 795502

A non-fatal shooting of a suspect wanted for passing forged checks. Plaintiff tried to flee in his car when confronted with officers who had staked out the parking lot of a shopping center in which he was suspected of passing such checks. Plaintiff was shot in the arm by an officer who feared that he was going to be struck by plaintiff's car. Trial attorney: Mark Stiffler; trial judge: Hon. Wayne Peterson.

11) *Flores v. Bryan*

U.S. District Court Case No. 01cv1353

A wrongful death case in which decedent was shot and killed when he stabbed with scissors a police officer who had entered decedent's home to free a hostage decedent was holding. (The officer was wearing a bulletproof vest and was not injured.) Trial attorney: Rick Ostrow; trial judge: Hon. Irma Gonzalez.

12) *Imperiale v. City of San Diego*

U.S. District Court Case No. 02-cv0969

A false arrest/excessive force case in which Plaintiff was stopped and searched by officers who had observed him engaging in an apparent drug transaction in the parking lot of a liquor store. Plaintiff allegedly suffered strains and sprains to his back and shoulders while scuffling with the officers. Trial attorney: Ed Cahill; trial judge: Hon. Larry Burns.

In addition, a defense verdict was obtained in a bench trial in *Bustamante v. City of San Diego*, San Diego Superior Court Case No. GIC 778384, a dangerous condition case in which the blind

plaintiff was injured when she walked into a traffic sign that had been partially knocked over and was hanging across the sidewalk upon which plaintiff was walking. (Trial attorney: Andrew Jones; trial judge: Hon. Patricia Cowett.) Finally, the City was successful in obtaining a judgment of \$7,687.36 in an unlawful detainer case against a tenant of the City-owned World Trade Center at 1250 Sixth Avenue. (Trial attorney: Kristi Pfister; trial judge: Commissioner Duncan Werth.) (Please see Yolanda Gammill's attached report for further details on this case.)

We have been similarly busy, but not quite so incredibly successful, in the non-tort litigation arena. Many high profile property cases were litigated this year, and the City was successful in most of them. In early January, United States District Court Magistrate Judge Leo Papas denied an ADA-based request for a temporary restraining order against the Super Bowl, and allowed the game to proceed. (Attorney: Gene Gordon) In July, Superior Court Judge Wayne Peterson denied a CEQA-based challenge to the expansion of the Francis Parker Middle School in Mission Hills, and allowed that project to proceed. (Attorney: John Mullen) Similarly, in August, Judge Peterson denied a long standing CEQA-based challenge to the City Council's decision to close Sorrento Valley Road to vehicular traffic. (Attorney: William S. Donnell) In July, United States District Court Judge Napoleon Jones, Jr. denied plaintiffs' motion for a preliminary injunction in a case in which plaintiffs sought to preclude the City from applying a \$250 campaign contribution limit to a committee formed to support the recall of Councilmember Scott Peters. The Ninth Circuit Court of Appeals subsequently upheld the decision, finding that the City may impose such limits without violating the First Amendment. (Attorney: John Mullen)

Unfortunately, the City was not so successful in defending two other significant property matters. In November 2002, the City prevailed in a request for a temporary restraining order filed by a neighborhood association opposing the relocation of the San Diego Rescue Mission from downtown to a site in Banker's Hill. However, despite that initial success, a Writ of Mandate was later granted in August against the City and Rescue Mission; the Hon. Wayne Peterson found that the environmental analysis conducted on the proposed project was inadequate and that the City had violated its own land development code by allowing the clustering of various social service functions at one facility. This dispute was eventually settled in early December 2003. (Attorneys: Lisa O'Neal and David King) In addition, despite some initial success, we were unable to ultimately prevail in another significant land use matter, *Barnes-Wallace v. City*. In that case, United States District Court Judge Napoleon Jones, Jr. granted partial summary judgment in plaintiffs' favor, finding that the City's lease of Camp Balboa in Balboa Park to the Boy Scouts violates the Establishment Clause and the No-Aid and No-Preference to religion clauses in the federal and state constitutions. A settlement affecting the City's participation and role in further proceedings in that case is pending. (Attorney: John Mullen)

The Trial Unit was also very successful in calendar year 2003 in the appellate arena. As mentioned above, in November, the Ninth Circuit upheld the trial court's decision allowing the City to impose a \$250 limit on campaign contributions to a committee formed to support the recall of Councilmember Scott Peters. (Attorney: John Mullen) Earlier in the year, the Fourth District Court of Appeals affirmed the trial court's ruling that the thirty-foot height limit contained in Proposition D does not apply to the new development of NTC (Naval Training

Center.) (Attorney: John Mullen) In March, the Fourth District also affirmed the trial court's ruling allowing the widening of the Mission Beach boardwalk. (Attorney: Leslie Fitzgerald) Finally, also in June, the Ninth Circuit affirmed the granting of summary judgment in the City's favor in a case in which plaintiffs contended that the City deprived them of equal protection by failing to diligently investigate the death of their infant son; plaintiffs contended that the suspect babysitter in the death was the daughter of a SDPD Officer and, because of that relationship, the death was not appropriately investigated by the department. (Attorney: Gene Gordon)

In addition to these cases, the deputies in the Trial Unit continue to resolve their numerous cases by successful motions, voluntary dismissals without payments, and nominal settlements. The vast majority of our cases are resolved in this manner.

The Trial Unit now has twenty-two (22) deputies, including myself. During the last year, Grant Telfer retired, and Armando Mendez, Hilda Mendoza and Lisa O'Neal transferred to other units. Matt Cord, David King and Kristi Pfister were added to our unit from the Criminal Division. We also expect to have one more deputy assigned to our unit from the new Civil Division hiring class.

FMD:vtc
Attachment